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August 17, 2006

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Alan Steinberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

Re: Request Pursuant to 40 CFR § 31.70 for Reconsideration of July 17, 2006 Decision to Withdraw HETF Funding From Cayuga Nation

Dear Administrator Steinberg:

This firm is litigation counsel to Chief Samuel George, Chief William Jacobs, Chester Isaac, Heron Clan Mother Bernadette Hill and Bear Clan Mother Inez Jimerson. The Bureau of Indian Affairs ("BIA") has recognized Chief George, Chief Jacobs, and Mr. Isaac as three of the six members of the Cayuga Nation Council of Chiefs, Representatives and Clan Mothers ("Council"). See March 15, 2005 letter from Franklin Keel, Eastern Regional Director, BIA, to Joseph Heath, Esq., annexed hereto as **Exhibit A**. As recognized by BIA, the Council is the governing body of the Cayuga Nation and its decisions are reached by consensus. *Id.* BIA has also recognized Bernadette Hill and Inez Jimerson as the Clan Mothers of their respective clans. *Id.* Clan Mother Bernadette Hill was designated by the Nation's Council in July 2001 as the Nation's representative for all matters pertaining to the Nation's participation in the Haudenosaunee Environmental Task Force ("HETF").

This letter is submitted as a formal request on behalf of the above-named Cayuga Nation Council members and Clan Mothers pursuant to 40 CFR § 31.70(c)(2) that you reconsider your July 17, 2006 decision to terminate all funding from EPA to the Cayuga Nation (the "Nation") for participation in HETF. A copy of your July 17, 2006 decision is annexed hereto as **Exhibit B**. Please note that this Request for Reconsideration has also been signed by Chief Samuel George and Chief William Jacobs.

01/01/2006

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Factual and Procedural Background

1. *The Nation's Participation in HETF*

By letter dated July 31, 2001, the Cayuga Nation provided EPA with written notice that the Nation's Council had reached a consensus decision to participate in HETF and to request grant funding from EPA for the purpose of developing an environmental program within the Cayuga Nation. The letter stated:

We support the development of an environmental program within the Cayuga Nation through the assistance of [HETF]. We acknowledge that funding must be generated for the support of this program and we request that General Assistance Program Grant funding flow through [HETF] for the purpose of the work . . . The terms of the proposals and programs presented and approved by the Cayuga Nation Council of Chiefs, and any modifications mutually agreed upon, shall be carried out to their maximum potential, through the collaboration of [Clan Mother] Bernadette Hill, as a representative of the Cayuga Nation Environment Program, and as the point person heading up this work and the said Cayuga Nation Council of Chiefs . . . In no way does the Cayuga Nation Council of Chiefs relinquish its sovereignty or jurisdiction over its lands in any way with approval of this program.

See July 31, 2001 letter from the Cayuga Nation Council of Chiefs to William Muszynski, EPA Region 2 Acting Administrator, annexed as **Exhibit C**. (Emphasis added).

From July 2001 until the present, the Cayuga Nation has continued to receive EPA funding on an annual basis for its participation in HETF. EPA funding for HETF is provided as a block grant, which is then allocated among the Cayuga, Tonawanda Seneca, and Tuscarora nations based on need. In 2001, HETF was funded at \$468,168; in 2002, the funding level was \$545,015; for the years 2003 and 2004, HETF funding totaled \$923,962; and funding for the years 2005 and 2006 totaled \$923,962.

The Nation has used the EPA funding to increase its capacity for administering the necessary environmental regulatory programs on Nation lands, to help prevent environmental contamination, and to improve community awareness for addressing environmental matters. The Nation's environmental programs address clean air and global climate change, land preservation and restoration, water quality, maintaining community and ecosystem integrity, and compliance and environmental stewardship. Specifically, the Nation has used EPA funding to monitor

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pollutants in Cayuga Lake and the Seneca Meadow landfill; to participate in the Cayuga Lake Watershed Committee; and to keep track of environmental issues and impacts throughout the Nation's aboriginal territory.

The Nation continues to build its infrastructure for environmental programs and recently established an office on Nation-owned lands for that purpose. The Nation employs one Cayuga citizen to carry out the Nation's environmental programs. This individual has been certified as an underground storage tank inspector and provides inspection services on behalf of HETF. The Nation attends quarterly HETF meetings; has participated in solid waste management and air quality training; and has attended environmental conferences, including those hosted by the EPA. The Nation will be a participant in the November water law conference to be held at Cornell University.

In addition, the Nation continues to provide outreach and environmental education to its citizens and the community at large by attending community events, speaking about HETF and the Nation's environmental concerns, and sending newsletters to its citizens concerning environmental education.

The Cayuga Nation's environmental programs have been made possible by the continued funding from EPA. If such funding is terminated, the Nation will have no source of funding to maintain its capacity to support its environmental programs.

2. *Clint Halftown's Unauthorized Campaign to Thwart the Nation's Participation in HETF*

By letter to EPA dated August 24, 2005, Clint Halftown, an individual member of the Nation's Council, claimed that "[a]t this time the Cayuga Nation is formally withdrawing from the HETF program." See August 24, 2005 letter from Clint Halftown to Kathleen Callahan, EPA Region 2 Acting Regional Administrator, annexed as **Exhibit D**.

By memorandum to Grant Jonathan dated August 27, 2005, attorney Joseph Heath responded to Mr. Halftown's August 24 letter. Mr. Heath's memorandum pointed out that BIA recognizes the Nation's Council as the only decision making body for the Nation; that BIA only recognizes those decision of the Council that are reached by consensus (as required by traditional Cayuga law and custom); that Mr. Halftown did not obtain a consensus decision from the Council to terminate the Nation's membership in HETF; and that Mr. Halftown did not possess the unilateral authority to terminate the Nation's membership in HETF. See August 27, 2005 Memorandum from Joseph Heath, Esq. to Grant Jonathan, EPA, annexed as **Exhibit E**.

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Attorney Heath's memorandum enclosed a copy of a March 17, 2005 BIA letter expressly recognizing the limited role of Mr. Halftown as the BIA-recognized representative for the Nation. That letter states:

So as to avoid any confusion, I wish to clarify and confirm to you the limitations on the scope of my March 15, 2005 letter . . . regarding the authority of Clint Halftown as the Cayuga Nation's representative . . . As stated in the letter, based on our understanding of the information presented to us, we continue to recognize Mr. Halftown as the Nation's representative in its government-to-government relationship with the Bureau. The scope of the Bureau's recognition of Mr. Halftown as the Cayuga Nation's representative does not extend to the Nation's dealings with any state or local government, other sovereign entities, corporations and other entities, or individuals.

See March 17, 2005 letter from Franklin Keel, BIA Regional Director to Joseph Heath, Esq. and Martin Gold, Esq., annexed as **Exhibit F**. (Emphasis added).

By letter to EPA dated September 15, 2005, this firm responded to Mr. Halftown's claims on behalf of Chief William Jacobs, Chief Samuel George, Chester Isaac, and Clan Mothers Bernadette Hill and Inez Jimerson. That letter provided evidence that decisions by the Nation's Council are reached by a process of consensus; that the Nation's traditional, consensus-based governmental structure was affirmed by the BIA; that there had been no consensus decision to terminate the Nation's participation in HETF; and that Mr. Halftown did not possess the authority to unilaterally terminate the Nation's participation in HETF. See September 15, 2005 letter from Christopher A. Amato, Esq. to Alan Steinberg, EPA Region 2 Administrator, annexed as **Exhibit G**.

You responded to this firm's September 15 letter by letter dated October 7, 2005. You stated that, in accordance with the consensus decision of the Nation's Council dated July 31, 2001, to participate in HETF, EPA would continue to recognize the Nation as a recipient of HETF funding. You also stated that you sought further clarification from Mr. Halftown as to whether or not the Nation had withdrawn its support for the HETF.

With regard to Mr. Halftown's statements that the Cayuga Nation is formally withdrawing from the [HETF], EPA seeks further clarification. By letter dated July 31, 2001, EPA was notified that the Cayuga Nation Council of Chiefs supported the development of an environmental program through the assistance of

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HETF . . . Consistent with that notification, EPA has been providing, and continues to provide, General Assistance Program (GAP) funding through the HETF for the benefit of the Cayuga Nation. We asked Mr. Halftown to clarify whether or not the Cayuga Nation Council of Chiefs has withdrawn its support for the HETF. It is, of course, EPA's intention to act on this matter consistent with the will of the Cayuga Nation Council of Chiefs.

See October 7, 2005 letter from Alan Steinberg, EPA Regional Administrator to Christopher A. Amato, Esq., annexed as **Exhibit H**. (Emphasis added).

In response to your October 7 letter, Mr. Halftown provided a "clarification" of his position on HETF funding by letter dated October 21, 2005. That letter states:

That decision [to withdraw from HETF] is based upon the fact that not only do I not see any positive progress achieved from having an environment office at the Cayuga Nation at this time . . . I still stand by my position taken in my earlier letter

See October 21, 2005 letter from Clint Halftown to Alan Steinberg, EPA Regional Administrator, annexed as **Exhibit I**. (Emphasis added). As Mr. Halftown's in his October 21 letter made clear, he was stating a personal position, not a consensus decision of the Nation's Council. Significantly, EPA did not terminate the Cayuga Nation's HETF funding as a result of Mr. Halftown's October 21, 2005 "clarification."

Approximately seven months later, on May 11, 2006, Mr. Halftown sent another letter to EPA again claiming that the Cayuga Nation had decided to terminate its membership in the HETF. See May 11, 2006 letter from Clint Halftown to Alan Steinberg, EPA Regional Administrator annexed as **Exhibit J**.

On June 30, 2006, Daniel French, Mr. Halftown's attorney, sent two letters to you in support of Mr. Halftown's May 11 letter. In one letter, Mr. French reiterated Mr. Halftown's claim that "[w]e are respectfully advising you that the Cayuga Nation will no longer participate in the HETF program." In the other letter, Mr. French stated that he was requesting, "at the direction of the Cayuga Nation Council," copies of all documents pertaining to the Nation's participation in HETF.¹ Copies of Mr. French's June 30, 2006 letters are annexed as **Exhibit K**.

¹ In his letters to EPA, Mr. French has consistently misrepresented himself as counsel to the Cayuga Nation. Mr. French's client is Clint Halftown, not the Cayuga Nation. The Council

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Neither Mr. Halftown nor Mr. French provided any evidence of a new consensus decision by the Nation's Council to revoke its July 31, 2001 decision to participate in HETF, or any other evidence of a Council decision to withdraw from HETF.

The July 17, 2006 Decision

By letter dated July 17, 2006 and received by this firm's clients on July 19, 2006, you informed our clients of your decision to terminate all funding for the Cayuga Nation's participation in HETF. Your letter specifically references Mr. Halftown's May 11, 2006 letter and states:

It is Region 2's intention to act in this matter consistent with the will of the Cayuga Nation. At the present, it is not clear what that will is. Moreover, under the present circumstances, it is unclear which entity (HETF or the Cayuga Nation) is the eligible grantee for any future EPA grants to build environmental capacity for a Cayuga Nation environmental program. Until there is clarification from the Council of Chiefs, represented as consensus of the chiefs (which we understand is the Cayuga tradition), Region 2 will refrain in the future from awarding any financial assistance either to HETF on behalf of the Cayuga Nation or directly to the Cayuga Nation.

See Exhibit B.

This firm has previously submitted a letter, dated July 21, 2006, objecting to your July 17, 2006 decision to terminate the Nation's HETF funding. A copy of that letter is annexed as **Exhibit L.**

has never engaged Mr. French to perform legal services on behalf of the Nation. Additionally, for the reasons stated above, Mr. French's claim in his June 30, 2006 letter that "the Cayuga Nation will no longer participate in the HETF program" is baseless because there has been no consensus decision by the Council to withdraw from HETF. We also note that Mr. French's second June 30 letter incorrectly states that he is requesting documents relating to the Nation's participation in HETF "[a]t the direction of the Cayuga Nation Council." The Council has not directed Mr. French to take any such action. Indeed, if Mr. French truly represented the Cayuga Nation as he claims, he would already be in possession of the requested documents.

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Amount in Dispute

EPA funding for HETF is provided as a block grant, which is then allocated among the Cayuga, Tonawanda Seneca, and Tuscarora nations based on need. In 2001, HETF was funded at \$468,168; in 2002, the funding level was \$545,015; for the years 2003 and 2004, HETF funding totaled \$923,962; and funding for the years 2005 and 2006 totaled \$923,962.

Objections to Decision

The above-named Cayuga Nation Council members and Clan Mothers object to the July 17, 2006 Decision on the following grounds:

1. EPA Has Failed to Honor a Decision by the Nation's Governing Council

As EPA's October 7, 2005 letter acknowledged, the Council reached a consensus decision in 2001 to support the development of an environmental program through HETF. *See* Exhibit H. Until now, EPA has honored that Council decision. The Council has never reached a consensus decision to withdraw from HETF or to otherwise modify or revoke its 2001 decision on this matter. Thus, it is unclear on what basis EPA has now – without soliciting any additional input from Cayuga Council members – determined to ignore the Council's 2001 decision.

EPA's decision to revisit this issue was apparently based on multiple letters and phone calls to EPA from Mr. Halftown and from Mr. Halftown's lawyer, Daniel French. As EPA has been previously informed, BIA has explicitly recognized that no individual, including Mr. Halftown, possesses authority to make unilateral decisions on behalf of the Cayuga Nation. To the contrary, BIA has repeatedly and categorically recognized that the Council is the sole governing body of the Cayuga Nation, and that the Council reaches decisions based on consensus. EPA has been repeatedly advised that the letters sent to EPA by Mr. Halftown purportedly on behalf of the Cayuga Nation were not authorized by the Council, that the letters do not express the consensus of the Nation's Council, and that EPA's reliance on Mr. Halftown's letters is therefore misplaced and in denigration of the Nation's sovereignty.

EPA's sudden and unexplained decision to refuse to honor the Council's 2001 decision is of grave concern because it denigrates the Nation's sovereignty. As EPA has been informed in previous correspondence, the Cayuga Nation is governed by consensus decision making by the Nation's Council. *See, e.g.,* Exhibits F and G. Once the Council makes a decision, that decision cannot be modified or overturned in the absence of a subsequent consensus decision by the Council. As you have been previously informed, the Council has not amended or revoked its 2001 decision.

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The fact that a single Cayuga citizen (or his attorney) now claims that the Nation has “withdrawn” from HETF has no bearing or effect on the Council’s prior decision in this matter. Mr. Halftown’s purported dissatisfaction with HETF is nothing more than an effort to consolidate unilateral control over all funds flowing to the Nation from the federal government. In any event, disaffection by a single Cayuga citizen is not sufficient grounds for undermining a consensus decision by the Council.² Neither Mr. Halftown nor his attorney have offered any authority in Cayuga law, tradition or customs that allows a single Cayuga citizen to unilaterally repudiate a formally adopted Council resolution reached by consensus. In fact, no such authority exists. For EPA to lend credence to the specious claims of Mr. Halftown and his attorney is to denigrate the Nation’s sovereignty and impermissibly interfere in the Nation’s right to self-government.

Indeed, it is obvious that the Nation’s government would be permanently hobbled were unilateral claims like Mr. Halftown’s to be given credence. Under that scenario, no decision of the Council would ever be final, because individual Council members could subsequently undermine the decision by changing their mind weeks, months, or even (as in this case) years after a consensus decision had been reached. The inevitable outcome of such a system would be complete paralysis of the Nation’s government, because no outside government or entity could rely on a decision of the Nation’s Council if decisions could be so easily disavowed.³

2. *The July 17 Decision Was Made Without Providing the Nation With Notice and an Opportunity to be Heard*

Your July 17 decision was made without providing the Nation with proper notice and an opportunity to be heard. Members of the Council were not informed of EPA’s unilateral decision

² We note that Mr. Halftown’s business enterprises have been the beneficiary of past HETF funding including, for example, free inspection of underground storage tanks at his gas station business.

³ For this reason, your claim that a “clarification” from the Council is needed on this issue is unfounded. The Council has already spoken on this issue, and absent a further consensus decision amending or nullifying that decision, the Council’s 2001 decision stands. Your request for a clarification is also at odds with the prior practice of EPA, which has been to honor the Council’s 2001 decision without requiring the Council to reaffirm that decision on an annual basis.

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to revisit this issue, which all believed to have been laid to rest in October 2005. The Nation possesses a legitimate entitlement to and interest in continued funding of its environmental program and should therefore have been provided the opportunity to be heard on this vital funding issue.

3. *The July 17 Decision Violates Government-to-Government Consultation Policy*

EPA's failure to inform members of the Council that EPA was reconsidering its prior determination in this matter falls far short of the consultation protocol that the Haudenosaunee are attempting to establish with EPA. The decision is contrary to the spirit and letter of consultation, as required by Executive Order 13175, EPA's own regulations and guidelines and the numerous drafts of "consultation agreements" that have been exchanged between EPA and various Haudenosaunee governments.

4. *The July 17 Decision Violates the EPA Regulations Governing GAP Funding*

The regulations governing award of general assistance program funding ("GAP" funding) allow EPA to terminate such funding only in limited circumstances, which have not occurred here. Generally, GAP funding "shall remain available until expended within the term of the award." 40 CFR § 35.10025(c); *see also* 42 U.S.C. § 4368b(d)(3). GAP funding may be terminated only (i) by the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated (*see* 40 CFR § 31.44); or (ii) if the grantee materially fails to comply with any term of the award, which requires that the grantee be given notice and an opportunity for a hearing (*see* 40 CFR § 31.43). Neither ground for termination exists here.

The July 17 decision to terminate GAP funding to the Cayuga Nation was not the result of the Nation consenting to termination of the funding. Nor did the Nation fail to comply with the terms of the funding. Significantly, the July 17 decision does not cite either of these grounds as the reason for the decision to terminate funding. Consequently, the decision to terminate the Nation's GAP funding was in contravention of the applicable regulations.

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Conclusion

For the reasons set forth above, the above-named Cayuga Nation Council members and Clan Mothers request that EPA reconsider its July 17, 2006 decision to terminate all funding to the Cayuga Nation for development of an environmental program.

Very truly yours,

DREYER BOYAJIAN LLP

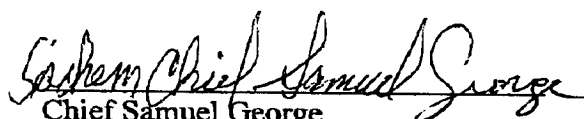
A handwritten signature in black ink, appearing to read "Chris Amato", is written over the printed name.

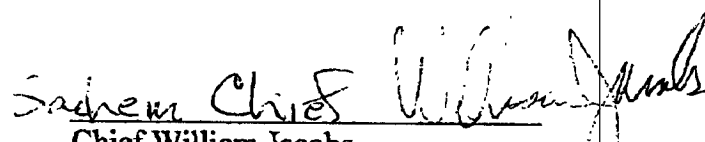
Christopher A. Amato
Of Counsel

CAA/kmc

enc.

cc: Joyce King, HETF Director
Joseph Heath, Esq.


Chief Samuel George
Cayuga Nation


Chief William Jacobs
Cayuga Nation